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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,960	12/08/2005	Michael C. Gaidis	FIS920030127US1	6525
33074 7590 12/24/2008 INTERNATIONAL BUSINESS MACHINES CORPORATION DEPT. 18G BLDG. 300-482 2070 ROUTE 52 HOPEWELL JUNCTION, NY 12533				
EXAMINER				
GOODWIN, DAVID J				
ART UNIT		PAPER NUMBER		
2818				
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12/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,960

Applicant(s)

GAIDIS, MICHAEL C.

Examiner

DAVID GOODWIN

Art Unit

2818

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Childress (US 6631055).

3. Regarding claim 1

4. Childress teaches a conductive line structure for a magnetic memory device.

Said structure comprises a lateral metal strap (304) conductively coupled to a lower metallization line (302). A magnetic tunnel junction stack (301) formed on the metal strap (304). A metal shield (320) formed over the magnetic tunnel junction stack (301) said metal shield (320) being substantially coextensive with the metal strap (304) an upper metallization line (322) conductively coupled to said metal shield (320) (fig 3d (column 6 lines 25-65)).

5. The limitation must distinguish from the prior art in terms of structure rather than function, *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997); See also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971). Claims directed to apparatus must be distinguished from the prior art in terms of

structure rather than function. *In re Danly*, 263 F. 2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is, not what a device does."

Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F. 2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

6. Regarding claim 2

7. Childress teaches a non-magnetic layer (308) between a lower magnetic layer (306) and an upper magnetic layer (311), a metal hard mask (314). The distance between the upper metallization (322) and the upper magnetic layer (311) is defined by a total thickness of the metal hard mask (314) and metal shield (320).

8. Regarding claim 4.

9. Childress teaches said metal shield (320) comprises platinum (column 6 lines 40-45).

10. Regarding claim 5

11. Childress teaches that the hard mask layer (314) comprises tantalum (column 6 lines 35-45).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Childress (US 6631055)

14. Regarding claim 3.
15. Childress teaches the total thickness of said hard mask (314) and metal shield (320) is 250 angstroms (column 6 lines 40-50).
16. Differences in thickness will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such thickness are critical. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the workable ranges by routine experimentation". *In re Aller*, 220 F.2d 454,456,105 USPQ 233, 235 (CCPA 1955).

Since the applicant has not established the criticality (see next paragraph), and this thickness has been used in similar devices in the art it would have been obvious to one of ordinary skill in the art to use these values in the device.

CRITICALITY

The specification contains no disclosure of either the critical nature of the claimed thickness or any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen dimensions or upon another variable recited in a claim, the applicant must show that the chosen dimensions are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

- 17.
18. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Childress (US 6631055) in view of Tsang (US 6909630)
19. Regarding claim 6.
20. Childress teaches that the lower metallization (302) is formed at a first metallization level and said upper metallization (322) is formed at a second level.
21. Childress does not teach that the structure is part of an MRAM device.

22. Tsang teaches formed using the structure in an MRAM device (column 10 lines 15-50).
23. It would have been obvious to one of ordinary skill in the art to use the structure in an MRAM device in order to provide high speed non volatile random access memory.
24. Regarding claim 7.
25. Childress does not teach a wordline.
26. Tsang teaches a wordline (30) formed at a lower metallization level and adjacent said lower metallization line (78). Said wordline (30) being electrically insulated from said lateral metal strap (79) and said wordline (30) disposed below said MTJ stack (31). The upper metallization (32) comprises a bitline of an individual MMRAM said cell including said MTJ and said wordline (column 10 lines 10-40) .
27. It would have been obvious to one of ordinary skill in the art to use the structure in an MRAM device in order to provide high speed non volatile random access memory.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID GOODWIN whose telephone number is (571)272-8451. The examiner can normally be reached on Monday through Friday, 9:00am through 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Loke can be reached on (571)272-1657. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

djg

/Steven Loke/

Supervisory Patent Examiner, Art Unit 2818